UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

EMMANUEL NWAOHIA,

Plaintiff,

v.

WAL-MART STORES, INC., WAL-MART STORES EAST LP AND JOHN DOES 1-5 AND 6-10,

Defendants.

Civ. No. 1:18-cv-10648-NLH

OPINION

APPEARANCES:

EMMANUEL NWAOHIA
1900 LAUREL ROAD, APT. #L-94
LINDENWOLD, NJ 08021

Plaintiff appearing pro-se

SALVADOR P. SIMAO, ESQ.
MATTHEW T. CLARK, ESQ.
FORDHARRISON LLP
300 CONNELL DRIVE, SUITE 4100
BERKLEY HEIGHTS, NJ 07922

On behalf of Defendants

HILLMAN, District Judge

This matter comes before the Court pursuant to Emmanuel Nwaohia's ("Plaintiff") request for reconsideration, which will be construed as a Motion for Reconsideration pursuant to Fed. R. Civ. P. Rule 59(e) ("Rule 59(e)") and Fed. R. Civ. P. Rule 60(b)

("Rule 60(b)").[1] (ECF No. 65). Previously, this Court issued an Opinion and Order granting summary judgment for Defendants Wal-Mart Stores, Inc., Wal-Mart Stores East, LP, and John Does 1-5 and 6-10. (ECF No. 63). Plaintiff claims that Defendants discriminated against him in violation of the New Jersey Law Against Discrimination ("NJLAD"). For the reasons expressed below, Plaintiff's Motion for Reconsideration will be denied.

BACKGROUND

The Court will reiterate the facts as necessary to decide the present motion and assumes familiarity with the facts as discussed in the Court's Opinion dated July 7, 2021. (ECF No. 63). Plaintiff was employed as a Maintenance Associate at two Wal-Mart Stores locations between 2004 and 2017. (Id. at 2.) Plaintiff alleges harassment due to his race and national origin, as a Black man of African descent as well as discrimination based on race, national origin, and disability status. (Id. at 3-4). Defendants assert that Plaintiff was terminated due to insubordination and disrespect towards his co-workers and supervisors. (Id. at 2, 4-5). This Court found that Plaintiff did not produce sufficient evidence to establish a *prima facie* case for his disability discrimination claims, and

[1] Given that the Plaintiff is pro se and does make some discernible allegations of misconduct by opposing counsel which is not captured in Rule 59(e), but is a prong of analysis in Rule 60(b), the Court will review Plaintiff's motion under both.

that Defendants offered a nondiscriminatory explanation for their actions which Plaintiff failed to rebut. (Id. at 14, 16). With regards to his accommodation claim, the Court found that Defendants granted Plaintiff his requested accommodation. (Id. at 17-19). The Court also found that Plaintiff only provided conclusory allegations with regards to racial and national origin harassment and discrimination that made the required fact intensive inquiry under the NJLAD impossible. (Id. at 23-24).

Plaintiff sent a letter which is being liberally construed as a Motion for Reconsideration under Rules 59(e) and 60(b). Plaintiff's letter broadly calls on this Court to hear his case, suggesting he wishes to have an oral argument and reiterates his claims of harassment and discrimination. (ECF No. 65). Plaintiff also alleges having issues with his previous lawyer. (ECF Nos. 65, 73, and 74).

DISCUSSION

I. Subject Matter Jurisdiction

This Court has jurisdiction over Plaintiff's federal claims under 28 U.S.C. § 1332, as there is complete diversity of the parties and the amount in controversy exceeds $75,000.

II. Standard for Motion Pursuant to Rule 59(e)

The scope of a Rule 59(e) motion for reconsideration is extremely limited and may not be used to relitigate a case. See Blystone v. Horn, 664 F.3d 397, 415 (3d Cir. 2011). Rather, it

may be used "only to correct manifest errors of law or fact or to present newly discovered evidence." Id. "'Accordingly, a judgment may be altered or amended [only] if the party seeking reconsideration shows at least one of the following grounds: (1) an intervening change in the controlling law, (2) the availability of new evidence that was not available when the court [decided the motion], or (3) the need to correct a clear error of law or fact or to prevent manifest injustice.'" Id. (quoting Howard Hess Dental Labs., Inc. v. Dentsply Int'l Inc., 602 F.3d 237, 251 (3d Cir. 2010)). In the context of such a motion, manifest injustice "generally . . . means that the Court overlooked some dispositive factual or legal matter that was presented to it," or that a "direct, obvious, and observable" error occurred. See Brown v. Zickefoose, No. 11-3330, 2011 WL 5007829, at *1 n.3 (D.N.J. Oct. 18, 2011). Such motions must be filed within 28 days of the entry of the judgment. Fed. R. Civ. P. 53(e).

With regards to Rule 59(e)'s time limitation, Plaintiff's motion was made on July 27, 2021, which was within 28 days of the entry of final judgment in this matter. See (ECF Nos. 64, 65) (Opinion entered on July 7, 2021; Plaintiff's letter received on July 27, 2021).

The first part of the assessment under Rule 59(e) asks whether there was an intervening change in the controlling law

of the case. Plaintiff's motion does not contain any references to any legal cases for support. See (ECF No. 65). Therefore, Plaintiff has not carried his burden to show that there was an intervening change in controlling law.

The second prong concerns the availability of new evidence that was not available when the Court made its decision. The Plaintiff's motion further discusses his claims of racial and national origin harassment, but he provides no new additional evidence or documentation. Compare (ECF No. 65) with (ECF Nos. 58, 59, 60). Plaintiff does provide "new" additional details pertaining to his claims, such as stating that he reported harassment to his manager "around September 2015," providing some specificity that was lacking to his claims as previously presented. (ECF No. 65). However, none of the information Plaintiff provides in his motion is information that was not previously available to Plaintiff while presenting his original Complaint or summary judgment briefing, as Defendants correctly point out with regards to Plaintiff's attempts to cite to his recollection of the deposition that occurred in October of 2020. (ECF No. 72 at 10).

Moreover, to the extent that Plaintiff attempts to make entirely new claims about retaliation or liability regarding his disabling injuries, a motion for reconsideration is not the appropriate venue to raise such claims and the Court will not

consider them. Lopez v. Corr. Med. Servs., No. 04-2155, 2010 WL 3881212, at *3 (D.N.J. Sept. 27, 2010) (citing Bowers v. Nat'l Collegiate Athletic Ass'n, 130 F.Supp.2d 610, 613 (D.N.J. 2001)).

Finally, the third consideration under Rule 59(e) is whether Plaintiff demonstrates the need to correct a clear error of law or fact or to prevent manifest injustice. Plaintiff does not argue that there was a clear error of law and does not cite to any legal arguments in his motion. See (ECF. No 65).

In this matter, there is no distinguishable argument that there is a clear error of fact, aside from Plaintiff's bald argument that he disagrees with the Court's decision to grant Defendants' Motion for Summary Judgment.

Plaintiff does make claims of injustice due to, as the Court understands it, the lack of oral argument.

i. Oral Argument is Not Required

Upon reading Plaintiff's letters, it appears that Plaintiff seeks oral argument with regards to his claims. (ECF No. 65) ("how are you going to close my case without any court date being sent to me[?]" and "[h]ow could you close my case without hearing a word from me?"). Pursuant to Federal Rule of Civil Procedure 78(b), the court may provide for submitting and determining motions on briefs, without oral hearings. Fed. R. Civ. P. 78(b). Local Civil Rule 78.1(b) notes that all motions

will be decided on the papers unless a party requests oral argument and the request is granted by the Judge or Magistrate Judge, or if the Court *sua sponte* directs for oral arguments to be held. The Court is not required to hold oral argument and may decide in its discretion whether oral argument is necessary or will occur on a pending motion. Morris v. United States, No 12-2926, 2015 WL 4171355, at *2 (D.N.J. Jul. 9, 2015).

The Court determined in this instance that oral argument was not necessary and decided the motions on the papers. Despite these letters failing to address any legal arguments put forth by Defendants, the Court still addressed the merits of Plaintiff's claims when construing Plaintiff's submissions as a response to Defendants' Motion for Summary Judgment. (ECF No. 63 at 8-9). Plaintiff was given the necessary, meaningful opportunity to present his case. Branco-Antonio v. AG United States, 792 Fed. App'x 189, 194 (3d Cir. 2019) (citing Mathews v. Eldridge, 414 U.S. 319, 348-49 (1976) ("The judicial model of an evidentiary hearing is neither a required, nor even the most effective, method of decision-making in all circumstances. . . . All that is necessary is that . . . [those who are to be heard] are given a meaningful opportunity to present their case.").

The Court has heard Plaintiff, with nine letters filed by him over the course of these proceedings. See (ECF Nos. 58, 59, 60, 62, 65, 66, 67, 73, 74). The Court painstakingly reviewed

each of Plaintiff's submissions in order to fairly address the merits of Defendant's summary judgment motion despite the lack of a proper response. See (ECF No. 63 at 9). The lack of a hearing does not amount to manifest injustice. Therefore, Plaintiff has failed to meet the requirements of Rule 59(e).

III. Standard for Motion Pursuant to Rule 60(b)

Rule 60(b) is only applicable to final judgments. Dinnerstein v. Burlington County, No. 13-5598, 2015 WL 224428, at *1 (D.N.J. Jan. 14, 2015) ("an order dismissing a complaint without prejudice is not a final order as long as the plaintiff may cure the deficiency and refile the complaint."). According to Rule 60(b), the Court has discretion to provide relief in final judgments for equitable reasons, in pertinent part: "(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party. . . (6) any other reason that justifies relief." Rule 60(b)(3) and (6); see also Pierce Assoc. Inc. v. Nemours Found., 865 F.2d 530, 548 (3d Cir. 1988) ("[a] motion for relief under Rule 60(b) is directed to the sound discretion of the trial court."). In general, motions pursuant to Rule 60(b) are to be granted sparingly. Jones v. Lagana, No. 12-5823, U.S. Dist. LEXIS 101488, at *2-3 (D.N.J. Aug. 3, 2016) ("[a] court may grant a Rule 60(b) motion only in extraordinary circumstances, and a Rule 60(b) motion is not appropriate to reargue issues that the

court has already considered and decided."); Brackett v. Ashcroft, No. 03-3988, 2003 U.S. Dist. LEXIS 21312, at *2 (D.N.J. Oct. 7, 2003).

Under Rule 60(b)(3), the movant "must establish that the adverse party engaged in fraud or other misconduct, and that this conduct prevented the moving party from fully and fairly presenting his case." Stridiron v. Stridiron, 698, F.2d 204, 207 (3d Cir. 1983). The movant must prove such fraud by clear and convincing evidence. Nelson v. United States, No. 17-5083, 2020 WL 6074471, at *2 (D.N.J. Oct. 14, 2020) (citing Shelton v. FCS Capital LLC, No. 2:18-cv-03723, 2020 U.S. Dist. LEXIS 105730, at *7 (E.D. Pa. June 17, 2020)). Under Rule 60(b)(6), the court must consider whether extraordinary circumstances justify reopening the judgment. Budget Blinds, Inc. v. White, 536 F.3d 244, 255 (3d Cir. 2008).

Motions pursuant to Rule 60(b)(3) have a time limitation of one year after final judgment, and those motions that seek relief under Rule 60(b)(6) are generally time barred after one year unless extraordinary circumstances delayed the filing. Lagana, LEXIS 101488, at *4-5; see also Gordon v. Monoson, 239 F. App'x 710, 713 (3d Cir. 2007).

Reading Plaintiff's Motion for Reconsideration liberally, the Court will address each avenue where Plaintiff has raised any colorable claim for relief. Plaintiff's motion was made on

July 27, 2021, which was within the one-year limitation of Rule 60(b)(3), and the Court finds that the motion's timing is sufficient under the reasonableness test of Rule 60(c)(1) for motions under Rule 60(b)(6). See (ECF Nos. 64, 65) (Opinion entered on July 7, 2021; Plaintiff's letter received on July 27, 2021).

The Court can construe an argument from Plaintiff to reconsider based on Rule 60(b)(3). Plaintiff brings up his issues with his former attorney in his Motion for Reconsideration as well as in his subsequent letters. (ECF Nos. 65, 73, and 74). Plaintiff specifically alleges that opposing counsel asked his former attorney to "drop my case, which he did." (ECF No. 65 at 1). Plaintiff reiterates this allegation in his subsequent letters: "As FordHarrison Co. lawyers ask my lawyer Mr. Costello K. LL. to drop my case and he did. His lawyer Mr. David S. Kim call and said we are going to pay you $30,000.00 and not what your lawyer is asking for $150,000.00 and if you say no you have the power to ask Judge N. Hillman to go ahead and dismins [sic] and close my case." (ECF No. 73 at 1). The Court notes that Plaintiff's former attorney properly submitted a Motion to Withdraw, which was accepted and granted on July 24, 2019. (ECF No. 27).

Similarly, Plaintiff accuses opposing counsel of misconduct, and stated that "Mr. D.S. Kim Walmart lawyer said

Mr. Nwaohia, if you did not agreed with the amount I like to pay that you have every power to dismiss my case in its entirety, and Judge N. Hillman did." (ECF No. 74). However, these accusations of malfeasance are entirely unsupported by any evidence on the record or otherwise that opposing counsel has acted improperly. Defendants' counsel has denied these allegations. (ECF No. 72 at 12). Such bare assertions cannot meet the standard of "clear and convincing" evidence required for Plaintiff to persevere under Rule 60(b)(3). Nelson, 2020 WL 6074471, at *2. What Plaintiff alleges as impropriety appears to be simply the back and forth of settlement discussions and in the face of a breakdown of those negotiations the rather straightforward assertion that either party could submit the matter to the Court for adjudication on the merits.

Finally, the Court will consider the "catch all" provision under Rule 60(b)(6), that is whether extraordinary circumstances justify reopening the judgment. An extraordinary circumstance is defined as an "extreme" and "unexpected" hardship resulting from the Court refusing to reopen a final judgment. Severs v. AG of New Jersey, No. 15-6421, 2020 U.S. Dist. LEXIS 181973, at *3 (D.N.J. Sept. 30, 2020). Here, Plaintiff does not assert any extreme or unexpected consequence of the Court's decision to grant summary judgment in favor of the Defendants in this matter. The Court acknowledges that Plaintiff asserts that he

lost wages since his termination and was evicted following his dismissal from his position at Wal-Mart, and while this has a substantial impact on Plaintiff, such an event is not the kind of "extraordinary" circumstances required for relief under Rule 60(b)(6). See Moolenaar v. Gov't of Virgin Islands, 822 F.2d 1342, 1347 (3d Cir. 1987) ("extraordinary" circumstances are necessary for granting Rule 60(b) relief; inequities or "manifest injustice" alone do not meet the standard).

Therefore, Plaintiff has failed to meet the standards for Rule 60(b)(3), and (6) for the extraordinary remedy of reconsideration.

Courts hold pro se litigant's submissions to "less stringent standards than formal pleadings drafted by lawyers," Erickson v. Pardus, 551 U.S. 89, 94 (2007). However, at summary judgment, a pro se plaintiff is not absolved from his or her burden of presenting "some affirmative evidence, i.e. not just mere allegations, to establish a prima facie case, and to show that there is a genuine dispute for trial." Stevenson v. County Sheriff's Office of Monmouth, No. 13-5953, 2018 WL 797425, at *2 (D.N.J. Feb. 8, 2018); see also Barnett v. N.J. Transit Corp., 573 F. App'x 239, 243 (3d Cir. 2014) (holding that pro se plaintiff was still "required to designate specific facts by use of affidavits, depositions, admissions, or answers to interrogatories . . . sufficient to convince a reasonable fact

finder to find all the elements of her prima facie case") (citation and quotation omitted). Plaintiff failed to put forth more than conclusory allegations both in his opposition to summary judgment and in his request to reconsider. Plaintiff's Motion for Reconsideration must be denied.

CONCLUSION

For the foregoing reasons Defendant's Motion for Reconsideration will be denied. An appropriate Order consistent with this Opinion will be entered.

Date: August 5, 2022
At Camden, New Jersey

s/ Noel L. Hillman
NOEL.L. HILLMAN, U.S.D.J.